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MOTOR INSURERS' BUREAU OF SINGAPORE v. AMGENERAL INSURANCE BHD

HIGH COURT MALAYA, KUALA LUMPUR
NORDIN HASSAN J
[ORIGINATING SUMMONS NO: WA-24-76-09-2018]
17 JULY 2019

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CIVIL PROCEDURE: *Judgment – Foreign judgment – Registration of judgment of High Court of Singapore – Application to set aside Singapore judgment – Whether timeline for registration of judgment complied with – Whether grounds for setting aside satisfied – Whether enforcement of Singapore judgment contrary to public policy in Malaysia – Reciprocal Enforcement of Judgments Act 1958, s. 5 – Rules of Court 2012, O. 67 rr. 5(2) & 9(1)*

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Liew Voon Fah ('Liew') was the owner of a motorcycle registered in Malaysia and the insurance policy for the motorcycle was provided by the defendant. The motor policy included mandatory coverage for third party liability but excluded liability for third party claim from pillion riders travelling on the motorcycle. On 8 December 2007, while Liew was riding his motorcycle with his wife ('Kho') as the pillion along Ayer Rajah Expressway in Singapore, Liew met with an accident. Kho sustained serious head injuries. Kho commenced an action ('Suit 613') against Liew in the High Court of Singapore ('Singapore HC') for losses and damages. The Singapore HC decided in favour of Kho. Subsequently, the defendant filed an originating summons in the Singapore HC ('OS 383') for a declaration that the defendant was not liable for any damages payable by Liew in Suit 613. The defendant also sought an injunction to restrain Kho or Liew from making any claim against Motor Insurers' Bureau of Singapore ('MIBS'). The defendant's OS 383 was dismissed. Thereafter, Kho filed an originating summons ('OS 404') against MIBS for a declaration that MIBS was liable to satisfy the judgment debt obtained under Suit 613. However, OS 404 was stayed pending the determination in OS 808 where the Singapore HC was to decide whether MIBS or Pacific & Orient Insurance ('P & O') was liable to satisfy a judgment obtained by injured passengers and pillion riders against a driver of a Malaysian-registered motor vehicle who had a motor insurance policy with P & O. The application by P & O in OS 808 was dismissed and the decision was affirmed by the Singapore Court of Appeal. Consequently, MIBS demanded the defendant to satisfy the judgment debt of Suit 613. Further, MIBS filed an application to commence third party proceedings against the defendant on the basis of memorandum of agreement dated 22 February 1975 between MIBS and all insurance companies in Singapore, the special agreement dated 26 December 1987 between MIBS and the

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defendant and the court decision in OS 808. Thereafter, MIBS and Kho jointly commenced an action against the defendant in the Singapore HC ('Suit 647') for the defendant to satisfy the judgment sum in Suit 613 and obtained a judgment in favour of MIBS. Suit 647 was registered in this court pursuant to an Order of court dated 10 October 2018. Hence, the application by the defendant to set aside registration of the judgment of the Singapore HC in Suit 647 pursuant to s. 5 of the Reciprocal Enforcement of Judgments Act 1958 ('REJA').

Held (allowing application):

(1) The Order for registration of the judgment dated 10 October 2018 stated that the defendant was at liberty to apply for the setting aside of the registration of the judgment within 14 days after the defendant was served with the notice of registration of the judgment. The defendant had been served with the notice of registration of the judgment on 23 November 2018 and the notice of application to set aside the judgment was filed on 7 December 2018 which was within the 14 days after the service of the registration of the judgment. Hence, the timeline pursuant to O. 67 r. 9(1) read with r. 5(2) of the Rules of Court 2012 had been complied with by the defendant. (paras 9, 11 & 12)

(2) The main objective of the REJA is to uphold the principle of international comity and substantial reciprocity between nations. The ground for setting aside any foreign judgment must be based on the grounds as stated under s. 5(1)(a) of the REJA. The defendant's application to set aside the judgment was pursuant to s. 5(1)(a)(v) of the REJA that the enforcement of the judgment would be contrary to public policy in Malaysia. (paras 16-18)

(3) The law with regard to third party coverage in motor policy is different in both countries and the dissimilarities resulted in different decisions by the courts in both countries. Section 91(1) of the Road Transport Act 1987 does not require for third party coverage in motor policy to include passenger or pillion riders. However, sub-s. 5(1) of the Motor Vehicles (Third-party Risks and Compensation) Act of Singapore requires for third party coverage in motor policy to include passenger or pillion riders. In the case of *Iskandar Mohd Nuli v. AmGeneral Insurance Berhad* ('*Iskandar*'s case'), the Federal Court had decided on point of law that Malaysian motor insurers were not liable to satisfy the judgment of a Singapore court obtained by injured passengers irrespective of any special agreement between parties. The core issue in Suit 647 had been decided to the contrary in *Iskandar*'s case. In the circumstances, the enforcement of the Singapore judgment was contrary to the public policy

in Malaysia and it was not just or convenient for the judgment to be enforced in Malaysia. Further, the payment made by the plaintiff in satisfaction of the Singapore HC judgment also did not alter the legal position. (paras 20-23, 28-30 & 32)

Case(s) referred to:
Iskandar Mohd Nuli v. AmGeneral Insurance Bhd [2017] 8 CLJ 129 FC ***(refd)***
Mann Holdings Pte Ltd & Anor v. Ung Yoke Hong [2019] 6 CLJ 475 CA ***(refd)***
Pacific & Orient Insurance Co. v. MIBS [2013] 1 SLR 341 ***(refd)***

Legislation referred to:
Reciprocal Enforcement of Judgments Act 1958, s. 5(1)(a)(v)
Road Transport Act 1987, s. 91(1)
Rules of Court 2012, O. 67 rr. 5(2), (3), 9(1), (3)

Motor Vehicles (Third-Party Risks And Compensation) Act (Cap 189) [Sing], 5(1)

For the plaintiff - Chong Yee Leong, Melvin Ng Yet Ting & Noryusriza Zulkifli; M/s Rahmat Lim & Partners
For the defendant - Liew Teck Huat & Lim Qi Si; M/s Suflan T H Liew & Partners

Reported by S Barathi

JUDGMENT

Nordin Hassan J:

Introduction

[1] AmGeneral Insurance Bhd, the defendant, has filed this originating summons to set aside the registration of the judgment of the High Court of Singapore dated 23 February 2018 in suit no. HC/S 647/2016 ('Suit 647') which is in favour of the plaintiff.

[2] The defendant's application to set aside the said judgment is pursuant to s. 5 of the Reciprocal Enforcement of Judgments Act 1958 ('REJA 1958').

The Salient Facts

[3] The relevant facts in this application are the following:

(i) Liew Voon Fah ('Liew') was the owner of a motorcycle registered in Malaysia with registration No. JGT 6125.

(ii) The insurance policy for the said motorcycle was provided by the defendant under policy no JVA0647209 which was for the period of 27 November 2007 to 26 November 2008.

(iii) The said motor policy included mandatory coverage for third party liability but excluded liability for third party claims from pillion riders travelling on the motorcycle. This is provided in condition 5(c) of the exception of section B of the said policy which is as follows:

> We will NOT pay for:
>
> (c) ... death or bodily injury to any person being carried in or upon or entering or getting on or alighting from Your Vehicle (unless he/she is required to be carried in or on Your Vehicle by reason of or in pursuance of his/her contract of employment with You and/or Your Authorised driver and/or his/her employer).

(iv) On 8 December 2007, Liew and his wife, Kho Siew Tai ('Kho') were on the way to work where Liew was riding the motorcycle and his wife as the pillion rider. However, while riding along Ayer Rajah Expressway in Singapore, they met with an accident where Kho sustained serious head injuries, including skull fractures and loss of brain tissue.

(v) On 16 July 2009, Kho commenced an action against Liew in High Court of Singapore claiming loss and damage suffered as the result of the accident. The action was registered as Suit 613 of 2009 ('Suit 613').

(vi) On 21 February 2011, the High Court gave judgment in favour of Koo where damages in the sum of $788,057.73 plus interest, costs and disbursement was awarded. This amount has not been paid by Liew until to date.

(vii) On 20 April 2010, the defendant, filed an originating summons in the High Court of Singapore, case No. OS 383/2010 ('OS 383') for a declaration that the defendant was not liable for any damages payable by Liew in Suit 613. The defendant also sought an injunction to restrain Kho or Liew from making any claim against Motor Insurers' Bureau of Singapore ('MIBS').

(viii) MIBS has declined to be made as a party to the OS 383 when invited by the defendant by letter dated 21 April 2010.

(ix) On 2 July 2010, the originating summons filed by the defendant was dismissed.

(x) Next, on 26 April 2012, Kho filed an originating summons, case no. 404 of 2012 ('OS 404') against MIBS for a declaration that MIBS is liable to satisfy the judgment debt obtained under Suit 613.

(xi) On 8 June 2012, MIBS filed an application to struck out the originating summons OS 404 or alternatively the said originating summons to be stayed pending the determination of another originating summons no. 808 of 2011 ('OS 808'). The issue in this OS 808 is similar with OS 404 in which the High Court of Singapore had to determine whether MIBS or Pacific & Orient Insurance ('P & O')

was liable to satisfy a judgment obtained by injured passengers and pillion riders against a driver of a Malaysian-registered motor vehicle who had a motor insurance policy with P & O.

(xii) The OS 404 then was stayed by the court pending the decision of OS 808.

(xiii) On 4 October 2012, the High Court of Singapore in OS 808 decided as follows:

(a) if a driver of a Malaysian registered motor vehicle insured by P & O Insurance is involved in an accident in Singapore, personal injury is caused to a passenger of the said vehicle, liability for such personal injury being excluded or not covered by the terms of P & O Insurance's policy of motor insurance, and judgment is obtained in Singapore by the said passenger against the said driver but such judgment is not satisfied in full within 28 days, and all other pre-conditions to liability under cl. 3 of the Principal Agreement being either satisfied or inapplicable as the case may be, then P & O Insurance is obliged to satisfy the said judgment obtained by the said passenger to the extent that it remains unsatisfied; and

(b) if MIB is to satisfy the said judgment obtained by the passenger, to the extent that it remains unsatisfied in the situation referred to above, MIB is entitled to recover this amount from P & O Insurance which shall indemnify MIB for all amounts, costs and/or interest paid by MIB in connection with the judgment.

(xiv) Hence, the application by P & O in OS 808 was dismissed. This decision was affirmed by the Singapore Court of Appeal on 29 April 2013.

(xv) Pursuant to the decision of OS 808, MIBS demanded AmGeneral Insurance Bhd to satisfy the judgment debt of Suit 613 but until to date, AmGeneral Insurance Bhd, the defendant, has not satisfied the judgment debt of Suit 613.

(xvi) Further on 4 November 2013, MIBS has filed an application to commence third party proceedings against the defendant on the basis of the memorandum of agreement dated 22 February 1975 between MIBS and all insurance companies in Singapore, the special agreement dated 26 December 1987 between MIBS and the defendant and the court decision in OS 808.

(xvii) On 19 October 2015, MIBS and Kho agreed that OS 404 be stayed for both parties to jointly commence proceeding against the defendant for the defendant to satisfy the judgment sum in Suit 613.

(xviii) On 21 June 2016, MIBS and Kho had jointly commenced writ action against the defendant registered as Singapore High Court Suit No. HC/S 647/2016 ('Suit 647') and obtained the judgment in favour of MIBS.

(xix) This Singapore High Court's judgment in Suit 647 was registered in this court pursuant to the order of this court on 10 October 2018.

(xx) Hence, this application to set aside the said judgment.

The Grounds Of The Defendant's Application To Set Aside The Registered Singapore High Court's Judgment

[4] The defendant's grounds to set aside the judgment are the following:

(i) the enforcement of the Singapore High Court's judgment would be contrary to the public policy in Malaysia on the basis that:

(a) it directly in conflicts with s. 91(1) of the Road Transport Act 1987 ('RTA 1987') which does not require compulsory third party coverage in motor policy to include passengers.

(b) the enforcement of the judgment is contrary to the Federal Court's decision in the case of *Iskandar Mohd Nuli v. AmGeneral Insurance Berhad* [2017] 8 CLJ 129.

(ii) the enforcement of the judgment would undermine the due administration of justice in Malaysia which has the impact of impairing Malaysian sovereignty.

(iii) the enforcement of the judgment offends against issue estoppels or *res judicata* as the issue in dispute in Suit 647 in Singapore High Court had been decided by the Federal Court in Malaysia in the *Iskandar*'s case.

The Plaintiff's Submission

[5] At the outset, the plaintiff submitted, that the defendant has failed to file and serve the notice of application and affidavit-in-support which are encl. 12 and encl. 13 to the plaintiff within 14 days period as stipulated at para. 3 of the court's order dated 10 October 2018 read with O. 67 r. 9(1) and O. 67 r. 5(2) & (3).

[6] The plaintiff further contends that the registration of the said judgment in Suit 647 is not contrary to the public policy of Malaysia on the following grounds:

A (i) under s. 91(1) RTA 1987, although it is not mandatory for the terms of motor policy insurance issued by motor insurers in Malaysia to cover passenger liability, but there is no provision which prohibits motor insurers from providing passenger liability coverage if it chooses to do so.

B As such, it was submitted that there is no inconsistency between the RTA 1987 and Singapore Motor Vehicle Act (MVA) in respect to an insurer's liability to passengers or pillion riders.

(ii) the defendant's liability to passengers and pillion riders under cl. 3(1) of the Singapore domestic agreement and the special agreement is C consistent with RTA 1987 and Malaysian public policy.

(iii) the plaintiff also distinguished *Iskandar*'s case as the case was between the insurer against its insured owner and authorised driver under the insurance policy and does not involve the issue of defendant's obligation D under the special agreement (read with Singapore domestic agreement) with the plaintiff. In addition, it was contended that the *Iskandar*'s case is consistent with the judgment in Suit 647 as the Federal Court decided that an insurer could rely on an exclusion clause which excludes passenger liability and the need to satisfy the third party judgment obtained by the victim passenger. E

(iv) It was further submitted that it is the public policy of Malaysia to give effect to the Singapore judgment as Singapore is a country with reciprocal arrangements with Malaysia.

Findings Of This Court

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Preliminary Issue

[7] As to the objection raised by the plaintiff in regard to the late filing and serving of the notice of application and affidavit in support to the plaintiff, O. 67 r. 9(1) provides as follows:

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> Application to set aside registration (O. 67 r 9)
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> 9 (1) An application to set aside the registration of the judgment shall be made by notice of application supported by affidavit and shall be filed, and a copy thereof served on the judgment creditor, **within the time permitted for such application under rule 5(2).**

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[8] Here, O. 67 r. 9(1) clearly states that the notice of application and the supporting affidavit to be filed and served on the judgment creditor within the time permitted under r. 5(2) which is as follows:

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Order for registration (O. 67 r. 5)

5(1) An order in Form 13 giving leave to register a judgment shall be drawn up by, or on behalf of, the judgment creditor and served on the judgment debtor.

(2) *Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.*

[9] In the present case, the order for registration of the said judgment dated 10 October 2018 states at para. 3, that the defendant is at liberty to apply for the setting aside of the registration of the judgment within 14 days after the defendant is served with the notice of registration of the judgment.

[10] The issue here is whether the defendant has applied to set aside the registration of the judgment within 14 days after being served with the notice of registration of the judgment.

[11] Based on the affidavits and documentary evidence before this court, I find, that the defendant has been served with the notice of registration of the judgment on 23 November 2018 and the notice of application to set aside the judgment was filed on 7 December 2018 which was within the 14 days after the service of the registration of the judgment as stipulated under para. 3 of the order dated 10 October 2018.

[12] In the circumstances, the timeline pursuant to O. 67 r. 9(1) read with r. 5(2) of Rules of Court 2012 has been complied with by the defendant.

[13] As to the merits of the defendant's application to set aside the Singapore High Court's judgment, it is instructive to make reference to O. 67 r. 9(3) of the Rules of Court 2012 and s. 5(1) of REJA 1958.

[14] Order 67 rule 9(3) states as follows:

(3) Where the Court hearing an application to set aside the registration of a judgment registered under the **Act** is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under subsection 3(2) of the Act **or that it is not just or convenient that the judgment should be enforced in Malaysia or that there is some other sufficient reason for setting aside the registration,** it may order the registration of the judgment to be set aside on such terms as it thinks fit. (emphasis added)

[15] Next, s. 5(1) of REJA 1958 states:

5(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment:

A (a) shall be set aside if the registering court is satisfied:

(i) that the judgment is not a judgment to which this Part applies or was registered in contravention of this Act;

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;

B (iii) *that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear*;

C (iv) that the Judgment was obtained by fraud;

(v) *that the enforcement of the judgment would be contrary to public policy in Malaysia*; or

(vi) that the rights under the Judgment are not vested in the person by whom the application for registration was made; and ...

D (emphasis added)

[16] In regard to REJA 1958, it needs to be mentioned here that its main objective is to uphold the concept or principle of international comity and substantial reciprocity between nations. This has been explained further by E the Court of Appeal in the case of *Mann Holdings Pte Ltd & Anor v. Ung Yoke Hong* [2019] 6 CLJ 475 as follows:

> [59] The Reciprocal Enforcement of Judgments Act 1958 is specific legislation enacted by Parliament to confer specific jurisdiction on the Courts to register Judgments given by superior Courts of those F reciprocating countries listed in the First Schedule to the Act. **The whole basis of the Act starts with the concept or principle of comity and substantial reciprocity between nations.** This is evident from the terms of section 3(2) which reads:
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> (2) The Yang di-Pertuan Agong may, if he is satisfied that in the event of the benefits conferred by this Part being extended to G judgments given in the superior courts of any country or territory outside Malaysia, substantial reciprocal of treatment will be assured as respects the enforcement in that country or territory of judgments given in the High Court, by order extend this Part to that country or territory and may, by the same or a different order, amend the First Schedule to add that country or territory thereto H and specify what courts of that country or territory shall be deemed to be superior courts for the purposes of this Part.

[17] Further, the grounds for setting aside any foreign judgment must be based on the grounds as stated under s. 5(1)(a) of REJA 1958 as explained I in the same case as follows:

> [56] ... The application was made pursuant to section 5 of the Act. As recognised by the learned Judge, following an earlier decision in *Malayan Banking Berhad v. Ng Man Heng* [2004] 1 LNS 597; [2005] 1 MLJ 470, the registration of a foreign judgment **should not be set aside on grounds outside section 5 of the act.**
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> (emphasis added)

[18] In the instant case, the defendant's application to set aside the judgment is pursuant to s. 5(1)(a)(v) of REJA 1958, that the enforcement of the judgment would be contrary to public policy in Malaysia.

[19] In determining this issue as to whether the enforcement of the Singapore High Court's judgment which has been registered in this court is against the public policy in Malaysia, firstly, reference to law in both countries is pertinent.

[20] It is undisputed that s. 91(1) of the RTA 1987 does not require for third party coverage in motor policy to include passenger or pillion riders.

[21] However sub-s. 5(1) of the Motor Vehicles (Third-party Risks and Compensation) Act of Singapore requires for third party coverage in motor policy to include passenger or pillion riders. The provision states as follows:

> *5(1) Where a person uses a motor in circumstances such that under section 3 there is required to be in force in relation to his use of it such a policy of insurance or security as is mentioned in section 3(1) then, if any other person is carried in or upon the motor vehicle while the user is so using it, any antecedent agreement or understanding between them (whether intended to be legally binding or not) shall be of no effect so far as it purports or might be held:*
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> *(a) to negative or restrict any such liability of the user in respect of persons carried in or upon the motor vehicle as is required by section 4 to be covered by a policy of insurance; or*
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> *(b) to impose any conditions with respect to the enforcement of any such liability of the user.*
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> (2) The fact that a person so carried as referred to in subsection (1) has willingly accepted as his the risk of negligence on the part of the user shall not be treated as negativing any such liability of the user.
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> (3) For the purposes of this section, references to a person being carried in or upon a motor vehicle include references to a person entering or getting on to, or alighting from, the motor vehicle, and the reference to an antecedent agreement is to one made at any time before the liability arose. (emphasis added)

[22] Clearly, the law with regard to third party coverage in motor policy is different in both countries.

[23] The dissimilarity of the provision of law on this issue, has resulted to a different decision by the courts in both countries.

[24] In contrast with the decision of the Singapore High Court, in Malaysia, the Federal Court in the case of *Iskandar Mohd Nuli v. Am General Insurance Bhd* [2017] 8 CLJ 129 has decided that pursuant to the special agreement, a Malaysian insurer is not liable to satisfy a judgment obtained by a victim of an accident involving a Malaysian registered vehicle in Singapore.

[25] The specific question posed to the Federal Court among others, is as follows:

> (ii) Whether pursuant to the special agreement (together with its annexures), a Malaysian insurer is liable to satisfy a judgment obtained by a victim of an accident involving Malaysian registered vehicle in Singapore, even though the motor insurance policy issued by the Malaysian insurer does not cover passenger liability?

[26] The Federal Court has answered this question in the negative.

[27] The Federal Court has also considered the Singapore High Court case of *Pacific & Orient Insurance Co. v. MIBS* [2013] 1 SLR 341, on the same issue and said the following:

> This case must be looked at in the context of legislation that makes it compulsory for passenger cover. In our view, the propositions of law in this case with regards to the special agreement and its clauses incorporating itself into the contract of insurance is the position in Singapore whilst the position of law in Malaysia remains that the contract of insurance is the binding document between the parties.

[28] Here, the fact remains that the Federal Court in Malaysia has decided on point of law that Malaysian motor insurers are not liable to satisfy the judgment of a Singapore Court obtained by injured passengers irrespective of any special agreement by parties after taking into account the different legislation in both countries on this matter.

[29] In this regard, the core issue in Suit 647, which decision is in favour of the plaintiff has been decided to the contrary by the Malaysian Apex court in *Iskandar*'s case. The Malaysia Federal Court's decision as alluded to earlier, is contrary to the decision by the Singapore Court in Suit 647 whose judgment has been registered in this court.

[30] In the circumstances, I find, the enforcement of the said Singapore judgment is contrary to the public policy in Malaysia and also it is not just or convenient for the judgment to be enforced in Malaysia.

[31] Aside from the above-stated issues, the plaintiff also raised the issue that the plaintiff was not a party to the *Iskandar*'s case and has no opportunity to present its case. This to me is immaterial as the Federal Court in *Iskandar*'s case has decided the legal issue on the matter in dispute as mentioned earlier.

[32] Further, the payment made by plaintiff in satisfaction of the said Singapore High Court's judgment as raised by the plaintiff also does not alter the legal position as decided in *Iskandar*'s case

Conclusion

[33] Based on the aforesaid reasons, the defendant's application to set aside the registration of the judgment of the High Court of Singapore dated 23 February 2018 is allowed with costs of RM5,000.